

SOURCE: 49 FR 11941, Mar. 28, 1984, unless otherwise noted.

Subpart 904.4—Safeguarding Classified Information Within Industry

904.401 Definitions.

Access authorization means an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material.

Applicant means an individual who has submitted an expression of interest in employment; who is under consideration by the contractor for employment in a particular position; and who has not removed himself or herself from further consideration or otherwise indicated that he or she is no longer interested in the position.

Classified information means information that is classified as restricted data or formerly restricted data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is identified as national security information.

Facility clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material.

Restricted data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the restricted data category pursuant to Section 142, as amended, of the Atomic Energy Act of 1954 (42 U.S.C. 2162).

Review or background review means a Contractor's assessment of the background of an uncleared applicant or uncleared employee for a position requiring a DOE access authorization prior to selecting that individual for such a position.

[67 FR 14875, Mar. 28, 2002, as amended at 74 FR 23124, May 18, 2009]

904.402 General.

(a) The basis of Department of Energy's (DOE) industrial security requirements is the Atomic Energy Act of 1954, as amended, and Executive Orders 12958 and 12829.

(b) DOE security regulations concerning restricted data are codified at 10 CFR part 1045.

(c)(1) Section 234B of the Atomic Energy Act (42 U.S.C. 2282b) requires that DOE contracts include a clause that provides for an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information. The clause is required for all DOE prime contracts that involve any possibility of contractor access to Restricted Data or other classified information. The clause is required to specify various degrees of violations and the amount of the reduction attributable to each degree of violation. The clause prescribed at 904.404(d)(6) (952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information) or the clause prescribed at 923.7003(f) (952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health) shall be used for this purpose unless the clause prescribed at 970.1504–5(b)(1) (970.5215–3, Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts) is used.

(2) The 952.204–76 clause entitled “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information” and the 952.223–76 clause entitled “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health” provide for reductions of fee or profit that is earned by the contractor depending upon the severity of the contractor's failure to comply with contract terms or conditions relating to the safeguarding of Restricted Data or other classified information. When reviewing

performance failures that would otherwise warrant a reduction of earned fee, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. Some of the mitigating factors that must be considered are specified in the clause.

(3) The contracting officer must obtain the concurrence of the Head of the Contracting Activity—

(i) Prior to effecting any reduction of fee or amounts otherwise payable to the contractor in accordance with the terms and conditions of the 952.204-76 clause entitled “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information” or of the 952.223-76 clause entitled “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health;” and

(ii) For determinations that no reduction of fee is warranted for a particular performance failure(s) that would otherwise warrant a reduction.

[67 FR 14876, Mar. 28, 2002, as amended at 68 FR 68776, Dec. 10, 2003; 74 FR 36361, July 22, 2009]

904.404 Solicitation provision and contract clause.

(d) The security clauses to be used in DOE contracts are found at 952.204. They are:

(1) *Security, 952.204-2*. This clause is required in contracts and subcontracts, the performance of which involves or is likely to involve classified information, access to special nuclear materials or the provision of protective services. DOE utilizes the National Industrial Security Program but DOE’s security authority is derived from the Atomic Energy Act which contains specific language not found in other agencies’ authorities. For this reason, DOE contracts must contain the clause at 952.204-2 rather than the clause at FAR 52.204-2.

(2) *Classification/Declassification, 952.204-70*. This clause is to be used in all contracts which involve classified information.

(3) *Sensitive foreign nation controls, 952.204-71*. This clause is required in unclassified research contracts which

may involve making unclassified information about nuclear technology available to certain sensitive foreign nations. The contractor shall be provided at the time of award the listing of nations referenced in DOE Order 142.3 or its successor. (The attachment referred to in the clause shall set forth the applicable requirements of the DOE regulations on dissemination of unclassified published and unpublished technical information to foreign nations.)

(4) *Disclosure of information, 952.204-72*. This clause may be used in place of the clauses entitled “Security” and “Classification” in contracts with educational institutions for research work performed in their own institute facilities that are not likely to produce classified information.

(5) *Facility Clearance, 952.204-73*. This solicitation provision should be used in solicitations expected to result in contracts and subcontracts that require employees to possess access authorizations.

(6) Except as prescribed in 970.1504-5(b), the contracting officer shall insert the clause at 952.204-76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, in all contracts that contain the clause at 952.204-2, Security, but that do not contain the clause at 952.250-70, Nuclear Hazards Indemnity Agreement.

(7) *Computer Security, 952.204-77*. This clause is required in contracts in which the contractor may have access to computers owned, leased or operated on behalf of the Department of Energy.

[49 FR 11941, Mar. 28, 1984; 49 FR 38949, Oct. 2, 1984, as amended at 54 FR 27646, June 30, 1989; 59 FR 24358, May 11, 1994; 67 FR 14871, Mar. 28, 2002; 67 FR 14876, Mar. 28, 2002; 68 FR 68777, Dec. 10, 2003; 71 FR 40885, July 19, 2006; 74 FR 23124, May 18, 2009; 74 FR 36361, July 22, 2009]

Subpart 904.6 [Reserved]

Subpart 904.7—Contractor Records Retention

904.702 Applicability.

(b) Contracts containing the clause at 952.223-71 Integration of Environment Safety, and Health into Work